



The Bar Council

Bar Council response to the Ministry of Justice consultation paper on Non-Contentious Probate Rules - Mandating online professional applications

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Ministry of Justice consultation paper on Non-Contentious Probate Rules – Mandating online professional applications.¹
2. The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar’s high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (BSB).
4. The Bar Council’s members in private practice do not, as a general rule, apply for probate as part of their professional activity. Barristers may work in firms providing professional probate applications, but no such barrister has had input into this response. We can therefore only be of limited assistance. But since we have been consulted, we will give our views.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907979/mandating-consultation-paper.pdf

Question 1

Do you agree that HMCTS should implement mandating of professional user applications? Please give reasons for your answer.

5. No, despite its apparent attraction. The Bar Council understands that, despite the on-line facility being available, and despite lockdown, just one-fifth of applications for probate by solicitors were made on-line in June 2020. We suspect the proof of the pudding lies in the eating. And there is little appetite yet. HMCTS should not make obligatory a practice which has not yet caught on. If the profession thought it was a good system, the up-take would have been much higher. The cost saving of £2m per year over the next 10 years is no justification. The cost is covered by the Probate Fee. If HMCTS made that saving, it ought to reduce the fee to reflect that.

Question 2

Do you agree with the advantages identified for professional users from the online probate system?

6. Yes, we agree that some of these appear to be advantages of the online system. But if it was clear that all these advantages were both real and substantial, then we suspect many more firms would be applying on-line.

7. We suspect (backed up by anecdotal reports from solicitors' firms) that a particular problem may be the unnecessary difficulties thrown up by the supposed fail-safe nature of the process, which results in almost inexplicable rejections/impediments to completing the process, as well as the necessity to plough through many pages ticking boxes which are wholly inapplicable and inappropriate to a simple case.

8. Many firms will already have their own computer programs, to which they are accustomed, and which include all or almost all of the supposed advantages. They no doubt prefer to stick with those, and rely on the product that it produces. There is also a possible perception that using an online system would reveal alterations made in the course of the process.

Question 3

Are there disadvantages with the online probate system? Please give details.

9. We refer to the above answer.

10. We also suspect that the introduction of an online service, coupled with the closure of the district registries threatens to reduce the amount of well-trained staff, and so lower the quality of assistance which the probate staff have provided, even to professional applicants.

11. As far as we are aware, the on-line process is not fully on-line, with Will and Estate Return/original Will having to be sent by post. If that understanding is correct, it suggests that the supposed advantage of a full online application is, as yet, unfulfilled.

12. The on-line system appears to be slower than the paper system of some years ago. We do not know why that is, but it suggests that the online probate system of itself does not speed up the process.

Question 4

Do you have any comments on the advantages to HMCTS of the online service?

13. No.

Do you consider there are disadvantages (please give details)?

14. We do not have any better understanding of potential disadvantages to the HMCTS than the HMCTS has itself.

Question 5

Do you disagree with any of the exceptions HMCTS proposes to make?

15. We have no comment to make here, save to point out that there is a misunderstanding about what grants to attorneys are. They are not grants to attorneys of the deceased, but to attorneys of the executor/administrator. They should be an exception (unless they are professional).

Question 6

Are there any other exceptions which you believe should be made to the mandating of professional user applications?

16. We cannot help here.

Question 7

Do you consider that any of proposals will have a disproportionate impact on individuals with protected characteristics? Are there any potential modifications that we should consider to mitigate this impact? Please give reasons for your answer.

17. We suspect that this may impact disproportionately on smaller firms and their clients or firms with less capital invested in them, who currently find the paper based-system simpler (and may be prevented from joining the online system by not doing enough probates per year). Whether such firms/individuals have protected characteristics, we cannot say.

Bar Council²

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² Prepared for the Bar Council by the Law Reform Committee